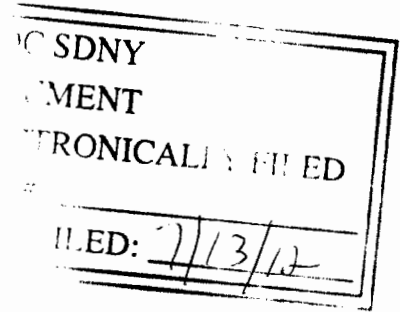


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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TRUSTEES OF NEW YORK CITY DISTRICT
COUNCIL OF CARPENTERS PENSION FUND :
et al., :

Plaintiffs, : 12 Civ. 1212 (ALC) (GWG)

-v.- : REPORT AND RECOMMENDATION

KAFKA CONSTRUCTION INC., :
Defendant. :

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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

The complaint in this matter was filed on February 16, 2012. As of June 22, 2012, no return of service had been filed with the Court as to the defendant. Accordingly, the Court issued an Order on that date informing plaintiffs that they were required either to serve the summons and complaint on or before July 6, 2012, or to seek an extension of this deadline by showing good cause for their failure to effectuate service. This Order specifically informed the plaintiffs that their case could be dismissed if they failed to comply with these directives.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

The 120-day period permitted under Rule 4(m) has expired. To date, there has been no proof of service filed with respect to the defendant in this matter. Nor has there been an application for an extension of time that shows good cause for such failure. For these reasons, and because this is not a case in which the Court should exercise its discretion to grant an extension in the

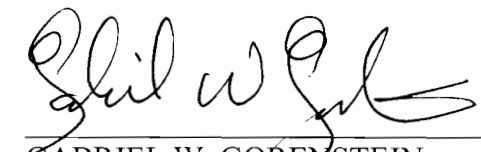
absence of good cause, see Zapata v. City of New York, 502 F.3d 192 (2d Cir. 2007), this matter should be dismissed without prejudice pursuant to Rule 4(m).

**PROCEDURE FOR FILING OBJECTIONS TO THIS
REPORT AND RECOMMENDATION**

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties have fourteen (14) days including weekends and holidays from service of this Report and Recommendation to serve and file any objections. See also Fed. R. Civ. P. 6(a), (b), (d). Such objections (and any responses to objections) shall be filed with the Clerk of the Court, with copies sent to the Hon. Andrew L. Carter, and to the undersigned, at 500 Pearl Street, New York, New York 10007. Any request for an extension of time to file objections must be directed to Judge Carter. If a party fails to file timely objections, that party will not be permitted to raise any objections to this Report and Recommendation on appeal. See Thomas v. Arn, 474 U.S. 140 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010).

SO ORDERED.

Dated: July 13, 2012
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge